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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SCOTT ERIC ROSENSTIEL, Plaintiff and Appellant, v. SUNLAND FINANCIAL SERVICES et al., Defendants and Respondents.	B286483 (Los Angeles County Super. Ct. No. BC608565)

APPEAL from orders of the Superior Court of Los Angeles County, Gregory W. Alarcon, Judge. Affirmed.

Law Office of Robert L. Bachman and Robert L. Bachman for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Scott Eric Rosenstiel appeals from the order dismissing his quiet title action for delay in prosecution.[1] Rosenstiel also seeks review of the court's earlier orders granting a motion to set aside entries of default and a motion to relate and consolidate cases filed by Gunter Zielke and his wife, Prapapun Zielke.[2] Rosenstiel contends the three motions suffered from a variety of procedural defects. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Rosenstiel's Derivative Action*

Rosenstiel filed a derivative action on behalf of Federal Homeowners Relief Foundation, a trust, on January 27, 2016 seeking, among other relief, to quiet title to real property located in Sunland. His operative first amended complaint, filed July 15, 2016, named as defendants the Zielkes; Sunland Financial Services; Marsha Stern, his grandmother, as managing trustee of Federal Homeowners Relief Foundation; and Maximilian Joachim Sandor.[3]

The first amended complaint alleged Federal Homeowners Relief Foundation was the owner in fee simple absolute of the

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[1] Although the dismissal order fails to comply with all the requirements of Code of Civil Procedure section 581d, we treat it as appealable, as reflected in our notice of April 5, 2018.

[2] We refer to Gunter and Prapapun by their first names when considered severally.

[3] The first amended complaint alleged that Stern, as managing trustee of Federal Homeowners Relief Foundation, had acknowledged the validity of the trust's claims; but a derivative suit by Rosenstiel as a member of the trust was nevertheless necessary because, at age 95 and legally blind, Stern refused to bring the action on the trust's behalf.

Sunland property as a result of a quitclaim deed executed by the Zielkes on March 6, 2012. Specifically, it alleged on February 22, 2000 Sandor, as trustee of the Alpha Beta Gamma Trust, which at the time held title to the Sunland property, had executed a promissory note secured by a deed of trust encumbering the Sunland property with Sunland Financial Services as the beneficiary. Sunland Financial Services was owned by Gunter or the Zielkes; and the Zielkes subsequently executed the March 2012 quitclaim deed granting to Federal Homeowners Relief Foundation "all right, title, interest and claim" that they may own "either personally or as settlors, trustees or beneficiaries of either the Alpha Beta Gamma Trust or Sunland Financial Services."

2. *September 2016 Entries of Default Against the Zielkes and Subsequent Briefing To Set Aside the Defaults*

On September 22, 2016 Rosenstiel filed requests for entry of default against Gunter and Prapapun. Their defaults were entered by the court clerk on the same day.

On February 7, 2017 the Zielkes moved to set aside the defaults pursuant to Code of Civil Procedure section 473, subdivision (b).[4] The hearing on the motion was set for March 3, 2017. The caption page indicated the motion was also brought pursuant to sections 418.10; 473, subdivision (d); and 473.5.

As factual background the Zielkes contended they had acquired the Sunland property by grant deed in 1997 and transferred the property into the Alpha Beta Gamma Trust. Rosenstiel later persuaded the Zielkes to transfer the Sunland

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[4] Statutory references are to this code unless otherwise stated.

property by quitclaim deed to Federal Homeowners Relief Foundation, a trust Rosenstiel had previously created to preserve the Zielkes' asset(s) for their son. Without the Zielkes' authorization, Rosenstiel arranged for the recording of trust documents naming Stern as trustee of Federal Homeowners Relief Foundation; and he arranged, or attempted to arrange, for the property to be transferred from the trust to Stern and then from Stern to himself.

The Zielkes sought to set aside the defaults on the ground they had not been served and asked the court to require Rosenstiel to serve them. The proof of service of the motion indicated it had been served by mail on Rosenstiel on February 7, 2017.

On February 17, 2017 Rosenstiel filed an opposition to the Zielkes' motion, arguing it had not been timely served. Specifically, he contended he had been served by overnight mail on February 8, 2017, as shown by the shipment tracking information available on the overnight carrier's website. Because section 1005, subdivision (b), requires notice of a motion be served 16 court days prior to the hearing, increased by an additional two calendar days for service by overnight delivery, Rosenstiel asserted, the motion should have been served by overnight mail no later than Friday, February 3, 2017 for a March 3, 2017 hearing. He also argued the Zielkes had intentionally committed fraud by claiming to have served their motion by mail on February 7 and, in any event, mail service on February 7 would still have provided insufficient notice for a March 3, 2017 hearing.

Rosenstiel argued he was prejudiced by the inadequate notice because he could have used the additional time to research

the law more thoroughly. Although he asserted he was making a limited appearance solely to oppose the motion on the ground of defective service, Rosenstiel also explained he was prepared to orally argue the merits at the hearing should the court be inclined to grant the Zielkes' motion.

3. *The Zielkes' Motion To Relate and Consolidate Cases*

On February 17, 2017 the Zielkes moved to relate eight cases[5] and to consolidate several of them, all involving Rosenstiel or Stern and ownership of the Sunland property.[6] The Zielkes

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[5] The Zielkes requested the following eight cases be deemed related: 1) Los Angeles County Superior Court No. (L.A. No. BC608565 (the instant case); 2) L.A. No. BC615215, filed by Rosenstiel against the Alpha Beta Gamma Trust to resolve ownership of the Sunland property and/or of the Alpha Beta Gamma Trust, which may or may not hold the Sunland property as a trust asset; 3) L.A. No. BC628570, which the Zielkes had filed to quiet title to the Sunland property and which also included a claim of financial elder abuse by Gunter against Rosenstiel; and 4) five cases (L.A. Nos. LS029058, LS029059, LS929090, LS929091 and LS029128) filed in Stern's name by Rosenstiel, acting with power of attorney for Stern. According to the Zielkes, the latter five cases sought restraining orders against various defendants with the primary intent to cease any encumbrances against the Sunland property. The Zielkes explained another judge had determined the five restraining order cases to be related; yet another court had decided two of those restraining order cases were related to the case filed by the Zielkes; and the trial court for the instant case had already deemed it was related to the Zielkes' case.

[6] The notice of motion requested consolidation of four cases: the instant case, the Zielkes' quiet title case (L.A. No. BC628570) and Stern's restraining order cases against Prapapun and Gunter

argued the cases to be consolidated share the primary issue of determining ownership of the Sunland property and separate trials of the cases would result in "chaos," with unnecessary cost, duplication of law and motion practice and inconsistent findings. On March 3, 2017 the Zielkes filed another notice of related case, identifying eight additional cases as related to the instant case.[7]

4. *The Trial Court's March 2017 Orders Granting the Zielkes' Motions and the Court Clerk's April 2017 Entries of Default Against the Zielkes*

On March 3, 2017 the trial court heard the Zielkes' motion to set aside the defaults entered against them; Rosenstiel appeared telephonically. After taking the matter under submission, the court issued a ruling later that same day granting the motion.

On March 21, 2017 the court heard the Zielkes' motion to relate and consolidate cases. Rosenstiel did not appear. As shown by the minute order dated March 21, 2017, the trial court granted the Zielkes' motion to relate cases and ordered the 15 other cases, all of which were listed in the order by their case numbers, be deemed related to the instant case and reassigned to its department. In addition, the minute order stated, "The motion as to consolidation is granted." The court ordered the

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(LS029058 and LS029059, respectively). The proposed order, however, requested consolidation of seven cases, all of the eight cases requested to be deemed related with the exception of Rosenstiel's action against the Alpha Beta Gamma Trust (L.A. No. BC615215).

[7] The eight additional cases identified were L.A. Nos. BC505675, EC060639, BC537921, LS027892, 16U08017, LS028480, BC644918, 16VESC07036.

instant case "to be the lead case number and case caption." The parties were also "ordered to file all future documents as to any of the above cases using that case number and caption."

On April 24, 2017 Rosenstiel again requested entry of default against the Zielkes. The court clerk entered the requested default the same day.[8]

5. *Gunter's Demurrer, Motion To Strike and Motion To Dismiss and the Court's Ruling*

On August 17, 2017 Gunter demurred to, and moved to strike portions of, Rosenstiel's complaint. On September 1, 2017 Gunter moved to dismiss the instant case for delay in prosecution and to allow the Zielkes' case (L.A. No. BC628570) to become the lead case. Gunter contended Rosenstiel had failed to effect service of process on him even though Gunter had made himself available at all times for personal service and had been served personally with various documents in other cases filed by Rosenstiel. According to Gunter, both the instant case and the Zielkes' case sought to quiet title to the Sunland property; but the issue of ownership would be better addressed by the Zielkes' case: All parties had already been served in the Zielkes' case, and that case would permit consideration of more comprehensive facts regarding the property's ownership.

Gunter also argued, instead of attempting to personally serve him in this case, Rosenstiel had engaged in serial filing of additional cases in an attempt to impede the Zielkes' efforts to quiet title to the Sunland property. According to Gunter, the

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[8] There is no evidence in the record on appeal the Zielkes had been properly served with a copy of the summons, complaint or first amended complaint prior to Rosenstiel's April 2017 request for entry of default.

trial court in the instant case had previously determined Rosenstiel to be a vexatious litigant; Rosenstiel, on behalf of himself or his grandmother, had filed 14 of the 15 cases identified as related in the vexatious litigant motion; and four of those 14 cases had already been dismissed for failure of prosecution.

On November 1, 2017 the trial court heard Gunter's motion to dismiss, as well as other matters. Rosenstiel did not appear. The court granted the motion to dismiss, with the order of dismissal entered that same day. The court also on November 1 granted Sandor's motion to set aside default and default judgment, if any, for failure to proceed/prosecute; struck a section 170.6 peremptory challenge; and placed off calendar as moot all other matters set for hearing that day, including Gunter's demurrer. According to the notice of ruling filed by defense counsel, in response to an oral motion by Gunter, the trial court had set aside the defaults against any and all parties in the instant case for Rosenstiel's failure to obtain default judgments within 45 days of the entries of default pursuant to California Rules of Court, rule 3.110(h).[9]

DISCUSSION

1. *The Trial Court Did Not Commit Reversible Error in Granting the Motion To Set Aside Entries of Default Against the Zielkes*

   a. *Standard of review*

An order granting relief from default is reviewed for abuse of discretion. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981; *Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1006.) The trial

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[9] All rule references are to the California Rules of Court unless otherwise stated.

court's judgment or order "is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal . . . . 'This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.'" (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609; see *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [same].) A judgment or order shall not be set aside for a procedural error unless the error has resulted in a "miscarriage of justice." (Cal. Const., art. VI, § 13; see *Grappo*, at p. 1006 [in an appeal of a ruling setting aside a default, "the burden is on [the appellant] to demonstrate error—and also 'prejudice arising from' that error"].) "'[A] "miscarriage of justice" should be declared only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.'" (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

b. *Rosenstiel failed to provide an adequate record for meaningful appellate review, did not show he had requested a continuance and failed to establish prejudicial error*

Rosenstiel presents on appeal the same arguments raised in his opposition to the Zielkes' February 7, 2017 motion to set aside their defaults—that is, notice of the Zielkes' motion was insufficient by five days; they filed a fraudulent proof of service; and he was prejudiced by the lack of sufficient notice because he required as much time as possible to prepare an opposition.

"'[I]t is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of the motion. [Citations.] This rule applies even when no notice was given at all. [Citations.] Accordingly, a party who appears and contests a motion in the court below cannot object on appeal . . . that he had no notice of the motion or that the notice was insufficient or defective.'" (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1288; see *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697 [same].)

Rosenstiel asserts, without citation to the record, he made a limited appearance at the March 3, 2017 hearing on the Zielkes' motion solely to oppose the motion on the ground of defective service. Rosenstiel's written opposition, however, stated he was prepared to argue the merits orally if necessary; and the record shows he appeared telephonically at the hearing. Because the appellate record does not contain a reporter's transcript or a settled or agreed statement of the hearing on the Zielkes' motion, Rosenstiel has failed to provide a record adequate to assess whether he orally opposed the Zielkes' motion on its merits and thus to allow for meaningful appellate review. (See *Jameson v. Desta*, *supra*, 5 Cal.5th at p. 609 [""if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed""]; *Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935 ["Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. [Citation.] Without a record, either by transcript or settled statement, a reviewing court must make all presumptions in favor of the validity of the judgment"].) Moreover, even if Rosenstiel appeared solely to oppose the motion on the ground of

inadequate notice, there is no indication in the record Rosenstiel requested a continuance of the hearing, thereby forfeiting the claim on appeal. (See *Carlton v. Quint*, *supra,* 77 Cal.App.4th at pp. 697-698 [a party who claims defective service or receipt of inadequate notice of a motion risks forfeiture of claim on appeal by failing to request a continuance even if the party had not opposed the motion on the merits].)

In addition, Rosenstiel has failed to demonstrate any prejudicial error justifying reversal. In his opposition filed in the trial court, he had claimed he needed more time to conduct additional legal research. However, he has not identified on appeal any legal argument he could have made with an additional five days' notice that would have convinced the trial court not to set aside entries of the Zielkes' default. Nor has Rosenstiel proffered any evidence he had properly served the summons and complaint on the Zielkes before seeking entry of their defaults, the basis on which the Zielkes moved to vacate those defaults. Thus, there is nothing to suggest it is reasonably probable Rosenstiel would have obtained a more favorable outcome in the trial court absent the alleged error. (See *Southern California Gas Co. v. Flannery* (2014) 232 Cal.App.4th 477, 491-492 [appellant who claimed he had inadequate notice of respondent's motion failed to demonstrate reversible error; he did not, on appeal, "identify any additional arguments" that would have persuaded the court to deny the motion].)

Relying on *Robinson v. Woods* (2008) 168 Cal.App.4th 1258, Rosenstiel argues he must establish prejudice and show he requested a continuance only if he had opposed the Zielkes'

motion on the merits.[10] *Robinson*, however, involved inadequate notice of a motion for summary judgment. Unlike notice for other types of motions filed pursuant to section 1005, under which the trial court may, on its own motion or on application for an order shortening time, prescribe a shorter time for service (see rule 3.1300(a), (b)), trial courts do not have the authority to shorten the minimum notice period for summary judgment hearings. (*Robinson*, at p. 1262; *McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 117-118.) The trial court had authority to hear the Zielkes' motion to set aside their defaults on shortened notice; and Rosenstiel, as discussed, was required, but failed, to establish prejudicial error.

2. *The Trial Court Did Not Commit Reversible Error in Granting the Motion To Relate and Consolidate Cases*

a. *Governing law*

Section 1048 "grants discretion to the trial courts to consolidate actions involving common questions of law or fact." (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978; see § 1048, subd. (a).) "'There are two types of consolidation: a complete consolidation resulting in a single action, and a consolidation of separate actions for trial. Under the former procedure, which may be utilized where the parties are identical and the causes have been joined, the

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[10] Rosenstiel also relies on a 1913 Supreme Court case, *Bohn v. Bohn* (1913) 164 Cal. 532, to support this argument. *Bohn*, however, was decided before the California Constitution was amended in 1914 to require in civil cases a showing that any procedural error resulted in a miscarriage of justice before reversal of the trial court's judgment. (See *People v. Watson*, *supra*, 46 Cal.2d. at pp. 834-836.)

pleadings are regarded as merged, one set of findings is made, and one judgment is rendered. In a consolidation for trial, the pleadings, verdicts, findings and judgments are kept separate; the actions are simply tried together for the sake of convenience and judicial economy.'" (*Committee for Responsible Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191, 196-197; see *Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1147.) Rule 3.350 and Superior Court of Los Angeles County, Local Rules, local rule 3.3(g)[11] set forth procedural requirements for motions to consolidate applicable to the instant case.

Similarly, the procedure for relating cases is governed by rule 3.300 and local rule 3.3(f). Cases are related if they "(1) [i]nvolve the same parties and are based on the same or similar claims; [¶] (2) [a]rise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact; [¶] (3) [i]nvolve claims against, title to, possession of, or damages to the same property; or [¶] (4) [a]re likely for other reasons to require substantial duplication of judicial resources if heard by different judges." (Rule 3.300(a).) "If all the related cases have been filed in one superior court, the court, on notice to all parties, may order that the cases, including probate and family law cases, be related and may assign them to a single judge or department." (Rule 3.300(h)(1).)

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[11] References to a local rule are to the Superior Court of Los Angeles County, Local Rules.

b. *Rosenstiel failed to establish prejudicial error by the trial court*

Rosenstiel does not argue on appeal that the cases addressed in the Zielkes' motion to relate and consolidate cases do not share common issues of fact and law. Rather, he identifies a variety of purported procedural errors that, in his view, warrant reversal of the trial court's March 21, 2017 order granting the motion: (1) the trial judge in Department 36 lacked jurisdiction to relate and consolidate the cases because, under rule 3.300, the authority to relate the cases was vested in Department 71, which declined to do so;[12] (2) the Zielkes failed to serve their notice of related case and motion to relate and consolidate cases on all parties to the cases to be related and consolidated, even though Rosenstiel himself and several other parties had been served; (3) the Zielkes failed to provide adequate notice of their consolidation motion because the motion's caption page stated the hearing date was March 21, 2017, but the notice of motion stated the date was March 27; (4) the Zielkes' February 17 motion sought only to consolidate some of the related cases but the court on March 21 ordered consolidation of all 16 cases listed on the Zielkes' March 3 notice of related cases; (5) the Zielkes' motion seeking consolidation was not noticed and

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[12] After Judge Alarcon on March 21, 2017 had ordered the cases listed on the Zielkes' March 3, 2017 notice of related cases be deemed related and reassigned to his department (Department 36), Rosenstiel filed a notice of related case in Department 71, which Rosenstiel contends is the department to which the earliest filed case had originally been assigned. Rosenstiel sought to relate some, but not all, of the cases already deemed related and reassigned to Judge Alarcon. The judge in Department 71 denied Rosenstiel's request.

heard after the cases were already related into a single department, in violation of local rule 3.3(g)(1); (6) the Zielkes failed to comply with rule 3.350(a)(1)'s requirements that the notice of a consolidation motion list all named parties, contain the captions of all the cases sought to be consolidated and be filed in each case sought to be consolidated; and (7) the Zielkes' consolidation motion was filed on February 17 while they were still in default. Rosenstiel also argues, because the Zielkes failed to comply with these various procedural requirements, the trial court's order relating and consolidating cases violated his right to due process under the California Constitution and the Fourteenth Amendment.

Whatever minimal merit there might be to some of Rosenstiel's procedural quibbles, his challenge to the trial court's order fails because he has not established he was prejudiced by the order to relate and consolidate cases. (See *In re E.M.* (2014) 228 Cal.App.4th 828, 852 ["'[a]bsent an explicit argument that a procedural error caused prejudice, we are under no obligation to address the claim of error'"].)[13] That is, he has not shown, as he must, that absent the claimed errors—or, indeed, absent the court's order relating and consolidating cases—it is reasonably probable he would have obtained a more favorable outcome on the Zielkes' motion to dismiss for delay in prosecution, the

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[13] Rosenstiel's "jurisdictional" contention the authority to relate and consolidate cases was vested in Department 71, not Department 36, does not raise an issue of subject matter jurisdiction. (See *Estate of Bowles* (2008) 169 Cal.App.4th 684, 695 ["The superior court is divided into departments . . . as a matter of convenience; but the subject matter jurisdiction of the superior court is vested as a whole"].)

principal order from which Rosenstiel directly appeals. (Cf. *Reid v. Balter* (1993) 14 Cal.App.4th 1186, 1195 ["When an appeal is taken from a judgment and the appellant alleges the trial court made an erroneous pretrial ruling, it is not enough to show that the ruling was indeed erroneous. In addition, the appellant must also 'show resulting prejudice, and the probability of a more favorable outcome, *at trial*"].)

Although the trial court's orders might have been clearer, the record shows the court consolidated the various cases for trial, not for all purposes;[14] and, when it granted Gunter's motion

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[14] After the court in the instant case ordered dismissal, for example, the parties to the Zielkes' case (L.A. No. BC628570) continued to file pleadings and motions, including a February 13, 2018 motion for leave to file a first amended complaint and a February 1, 2019 first amended complaint; and the court continued to issue orders, including a March 16, 2018 ruling on the motion for leave to file a first amended complaint. (As Rosenstiel has requested, we take judicial notice of the superior court's registers of actions, to the extent available on the superior court's website, for the cases related to, and consolidated with, the instant case.) Moreover, the trial court could not have consolidated the cases for all purposes, as opposed to for trial, because not all of the consolidated cases had identical parties. Wells Fargo Bank, N.A., for instance, is a defendant in L.A. No. BC644918 (the register of actions for which indicates it was "[c]onsolidated ([n]on-lead case) 03/21/2017"), but is not a party to the instant case. (See *Committee for Responsible Planning v. City of Indian Wells*, *supra,* 225 Cal.App.3d at p. 196 [consolidation for all purposes "'may be utilized where the parties are identical'"]; *Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391, 1396 [same]; 4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 347, pp. 476-477 [the condition requiring actions

to dismiss, it dismissed only the instant case. In fact, Gunter expressly requested only the instant case be dismissed for delay in prosecution, not all consolidated cases, and asked that the Zielkes' case (L.A. No. BC628570) be designated the lead case after dismissal.

In sum, because the order relating and consolidating cases did not affect Rosenstiel's obligation to timely serve the Zielkes with the summons and complaint in the instant case, the primary basis for the motion to dismiss for failure to prosecute, any purported errors in granting the motion to relate and consolidate did not prejudice Rosenstiel.

3. *The Trial Court Did Not Commit Prejudicial Error in Granting the Motion To Dismiss for Delay in Prosecution*

Rosenstiel contends the trial court erred in granting Gunter's September 1, 2017 motion to dismiss the instant case for delay in prosecution (for failure to properly effect service of process on Gunter) because it was filed, heard and decided after entry of Gunter's default on April 24, 2017. He also argues the court erred because, by the time the motion was filed, Gunter had already made multiple general appearances in the instant case, commencing with the filing on February 7, 2017 of the Zielkes' motion to set aside entries of default; and Gunter thus waived any objections to service.

"'An appellate court will ordinarily not consider procedural defects or erroneous rulings . . . where an objection could have been but was not presented to the lower court by some appropriate method.'" (*Doers v. Golden Gate Bridge Etc. Dist.*

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involve the same parties is not present for a consolidation of separate actions for trial].)

(1979) 23 Cal.3d 180, 184-185, fn. 1; see *In re Carrie W.* (2003) 110 Cal.App.4th 746, 755 [same]; *In re Marriage of Hinman* (1997) 55 Cal.App.4th 988, 1002 ["[f]ailure to object to the ruling or proceeding is the most obvious type of implied waiver"].) We need not address the merits of Rosenstiel's arguments, as he has forfeited his claims of error by failing to raise them in the trial court by an appropriate method: The register of actions for the instant case does not indicate Rosenstiel filed any opposition to Gunter's motion to dismiss; no opposition was included in the appellate record or designated by Rosenstiel for inclusion; and the November 1, 2017 minute order granting Gunter's motion to dismiss indicates Rosenstiel did not appear at the hearing on the motion.

Although Rosenstiel raised his procedural arguments in a section 1008 motion for reconsideration, such a motion is not an appropriate method to contest a ruling granting a motion to dismiss after the order of dismissal has been entered. (See *APRI Ins. Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 181-182 [trial court lacks jurisdiction to rule on a motion for reconsideration after an order of dismissal].) Indeed, the register of actions indicates the hearing on the motion was taken off calendar. Rosenstiel also did not attempt to show, let alone establish, his motion was based on new or different facts, circumstances or law that could not have been raised prior to the court's ruling on the motion to dismiss. (See § 1008, subd. (a) ["The party making the application [for reconsideration] shall state by affidavit . . . what new or different facts, circumstances, or law are claimed to be shown"]; *Hennigan v. White* (2011) 199 Cal.App.4th 395, 405-406 [trial court correctly denied motion seeking reconsideration of summary judgment motion based on

additional declarations averring new facts where the facts had already been known to the declarants, but had not been introduced, at the time of the motion]; *California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 46, fn. 15 ["It has long been the view that a party seeking reconsideration of a prior order based on 'new or different facts' must provide a satisfactory explanation for failing to present the evidence sooner"].)[15]

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[15] We reject Rosenstiel's suggestion the trial court lacked authority to consider the motion to dismiss because Gunter filed the motion before his default had been vacated. (See *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1440, 1443 [upholding dismissals notwithstanding prior entry of default and default judgment, finding "defendants' motions implicitly included a request for relief from the default entered against them," and "deem[ing] the trial court to have impliedly vacated the entry of defaults and the default judgments when it dismissed the actions"]; *id.* at p. 1444 ["a default judgment entered against a defendant who was not served with a summons in the manner prescribed by statute is void"]; see also Code Civ. Proc., § 583.250, subds. (a)(2) [action may be dismissed by the court on its own motion if service of summons and complaint has not been made within the time prescribed by statute], (b) [requirements for service of summons and complaint are mandatory and not subject to extension, excuse or exception except as expressly provided by statute].)

DISPOSITION

The orders granting Gunter's motion to dismiss and the Zielkes' motions to set aside entries of default and to relate and consolidate cases are affirmed. Rosenstiel will bear his own costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.